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TO:		FROM:
Examiner Jude Jean Gilles		Andrew J. Dillon, Reg. No. 29,634
ORGANIZATION:		DATE:
US Patent and Trademark Office		April 12, 2006
ART UNIT:	CONFIRMATION NO.:	TOTAL NO. OF PAGES INCLUDING COVER:
2143	9333	7
FAX NUMBER:		APPLICATION SERIAL NO.:
571-273-8300		10/042,412
ENCLOSED:		ATTORNEY DOCKET NO.:
Petition To Revive		AUS919970761US2

☒ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

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APR 12 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTORNEY DOCKET NO. AUS919970761US2

In re Application of:

JAMES W. ARENDT, ET AL.

Serial No. 10/042,412

Filed: January 7, 2002

**For: HIGHLY SCALABLE AND
HIGHLY AVAILABLE CLUSTER
SYSTEM MANAGEMENT SCHEME**

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840.

Examiner: Jude Jean Gilles

Art Unit: 2143

PETITION TO REVIVE UNDER 37 C.F.R. § 1.137(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

On January 23, 2006, Examiner Jean Gilles telephoned Martha Acosta, a secretary at IBM Corporation, the assignee of the present application and inquired regarding whether or not a reply had been submitted to the non-final Office Action mailed July 13, 2005. Ms. Acosta immediately contacted our offices, as the firm of Dillon & Yudell LLP is responsible for the prosecution of this application.

Repeated telephone calls to the Examiner were made in an effort to obtain a copy of the non-final Office Action mailed July 13, 2005, as a Petition to Revive under 37 C.F.R. § 1.137(a) must be accompanied by the required reply.

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(A)]

I hereby certify that this correspondence is being:

☐ deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☒ transmitted by facsimile on the date shown below to the U.S. Patent and Trademark Office at (571)273-8300.

4-12-2006

Date _____

Jane Graham
Jane Graham

Jane Graham

AUS919970761US2

Page 1

After repeated attempts to obtain a copy of the Office Action mailed July 13, 2005, a call was made to the Acting Director of Technology Center 2100 on March 22, 2006, and on that date, a copy of the Office Action was faxed to the undersigned attorney from the Director's office, as evidenced by the first sheet of that Office Action which is attached hereto.

Thereafter, I personally conducted a search of the file jacket and docket records for this application and determined that the office communication was not received. In further support of this statement, I submit herewith the Declaration of Vicky Filipowsky, the docket administrator for our firm. Ms. Filipowsky declares that she is the docket administrator for Dillon & Yudell LLP and that all correspondence from the United States Patent and Trademark Office is received and docketed by her. She also indicates that she examined the file folder for this application and verifies that no copy of the Office Action mailed July 13, 2005, was found therein.

In preparing to submit a Petition to Revive this application, I have reviewed the Office Action mailed July 13, 2005, and note that the Office Action is directed to Claims 1-26. A careful review of our file indicates that a Preliminary Amendment was submitted with the filing of this application which canceled Claims 1-13, 21-22 and 26. That Preliminary Amendment was received by the Office on January 7, 2002, as evidenced by Applicant's stamped post card receipt, of copy of which is submitted herewith. Claims 14 and 23 were amended by that Preliminary Amendment and new Claims 27-31 were added by that Amendment, thus, Applicant is unable to submit a required reply as the Office Action mailed July 13, 2005, did not examine the claims which were present in the application at the time of filing.

On March 27, 2006, Applicant submitted an Administrative Query pointing out to the Office that although no response was submitted to the Office Action dated July 13, 2005, that Office Action was, on its face, defective in that it was directed to claims which were no longer under consideration.

In response to that Administrative Query, the Examiner has indicated that, despite the defective nature of the Office Action mailed July 13, 2005, a Petition to Revive this application was the appropriate response. Thus, please consider this petition as a Petition to Revive the present application for having failed to respond to the defective July 13, 2005, Office Action, which was never received by attorneys for the Applicant.

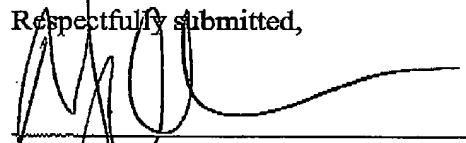
AUS919970761US2

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Applicant does not believe that a fee should be charged because the Office Action issued could not have been responded to with anything other than a request for a proper Office Action directed to the submitted claims; however, in the event such a fee is required, please charge that fee to IBM Corporation Deposit Account 09-0447.

No extension of time for this response is believed to be necessary. However, in the event an extension of time is required, that extension of time is hereby requested. Please charge any fee associated with an extension of time as well as any other fee necessary to further the prosecution of this application to IBM Corporation Deposit Account 09-0447.

Respectfully submitted,



Andrew J. Dillon

Registration No. 29,634

DILLON & YUDELL LLP

8911 North Capital of Texas Hwy.

Suite 2110

Austin, Texas 78759

(512) 343-6116

ATTORNEY FOR APPLICANT

APR/12/2006/WED 02:42 PM DILLON & YUDELL, LLP
03/22/06 WED 12:40 FAX 5712730107

DIRECTOR OFFICE

FAX No. 5123436446

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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/042,412 | 01/07/2002 | James W. Asendt | AUS919970761US2 | 9333 |
| 7590 07/13/2005 | | | | |
| Bracewell & Patterson, L.L.P.
Intellectual Property Law
P. O. Box 969
Austin, TX 78767-0969 | | | | |
| EXAMINER
JEAN GILLES, JUDE | | | | |
| ART UNIT 2143 PAPER NUMBER | | | | |

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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CENTRAL FAX CENTER

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APR 12 2006

In re Application of:

ARENDT ET AL.

§ Attorney Docket No. AUS919970761US2

Serial No. 10/042,412

§

§

Examiner: J. JEAN

Filed: JANUARY 7, 2002

§

§

Art Unit: 2143

For: SMART TABLE

§

§

DECLARATION AFTER HOLDING OF ABANDONMENTPURPOSE OF THIS DECLARATION:

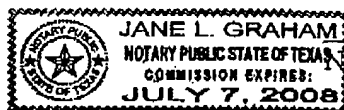
1. "I, Vicky Filipowsky, am over eighteen (18) years of age, of sound mind, capable of making this Declaration and am personally acquainted with the facts stated in it.
2. I am Docket Administrator for Dillon & Yudell LLP, having a business address of 8911 N. Capital of Texas Hwy., Suite 2110, Austin, Texas, 78759, since March 1, 2004. Prior to March 1, 2004, I was Docket Manager for the same group of attorneys practicing at Bracewell & Patterson, L.L.P., having a mailing address of P.O. Box 969, Austin, Texas 78767-0969. As such, I receive and docket all incoming correspondence from the U. S. Patent and Trademark Office addressed to this group of attorneys at either address.
3. On January 23, 2006, I received a telephone call from our client, IBM, reporting that Examiner Jean had notified them that the above-referenced patent application had gone abandoned for lack of a response to a first Office Action of July 13, 2005. Said Office Action was never received by me for docketing, although the mailing address noted on the Office Action: P.O. Box 969, Austin, Texas 78767-0969 is still monitored on a regular basis by Dillon & Yudell LLP.
4. I have carefully examined the file folder for this application and can verify that no copy of the Office Action dated July 13, 2005, was placed in the application file folder."

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issued thereon.


Vicky Filipowsky

SUBSCRIBED AND SWORN TO on this 22 day of March, 2006, to certify which witness my hand and seal of office.

My Commission expires:




JANE L. GRAHAM
NOTARY PUBLIC, STATE OF TEXAS

Received in the U.S.P.T.O.
In re Application of:
James W. Arendt, et al.
Highly Scalable and Highly Available Cluster System Management
Scheme

NEW PATENT APPLICATION**ENCLOSED HEREWITH:**

1. Transmittal Letter Requesting Divisional Application (in duplicate) and (with attachments); w/ Certificate of Express Mail (ET057447168US);
2. Copy of originally filed application and drawings;
3. Copy of prior oaths or declarations as originally filed;
4. Assignments of inventors to IBM Corporation as originally filed (2 pages);
5. Seven (7) sheets of formal drawings;
6. Preliminary Amendment;
7. PTO Form 1449; References marked AA-BB; and
8. Our return postcard.

IBM CORPORATION

Our File No. 0116AD-AUS919970761US2

Mailed: January 7, 2002

RNM/db

1/28
Jc828 U.S. PTO
10/042412
01/07/02

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